

ASSEMBLY BILL

No. 1554

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Atkins and Eggman)
(Coauthors: Senators Block and Corbett)

January 27, 2014

An act to amend Sections 1418.21, 1422.5, 1424, 1429, 1439, 1569.35, and 1569.37 of, and to add Section 1569.25 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 1554, as introduced, Skinner. Long-term care facilities: residential care facilities for the elderly.

Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, establishes an inspection and reporting system and a provisional licensing mechanism, administered by the State Department of Public Health, to ensure that long-term health care facilities, as defined, are in compliance with state statutes, regulations, and federal standards pertaining to patient care. The act requires facilities to make certain information available to the public and specifies that records held by the department in connection with the act are public records. The Lanterman-Petris Short Act and the Lanterman Developmental Disabilities Services Act make confidential all records and information obtained in the course of providing intake, assessment, and services to persons with developmental disabilities and to voluntary or involuntary recipients of services.

This bill would specify that certain disclosure provisions of the Long-Term Care, Health, Safety, and Security Act of 1973 apply

notwithstanding the confidentiality provisions of the Lanterman-Petris Short Act and the Lanterman Developmental Disabilities Services Act.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services. Existing law authorizes a person to request an inspection of a facility by transmitting notice of an alleged violation of law to the department. Existing law requires the department to review a complaint and conduct an onsite inspection within 10 days and requires the department to provide the substance of the complaint to the licensee no earlier than the time of the inspection.

This bill would make various changes to this complaint procedure, including prohibiting the department from disclosing the substance of the complaint to the licensee until the investigation is completed and requiring the department to make an onsite inspection within 24 hours of receiving a complaint where the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would require the department to complete its investigation within 90 days of receiving a complaint, or within 30 days where the complaint alleges abuse, neglect, or a threat of imminent danger. The bill would authorize a complainant who is dissatisfied with the department's investigation, findings, or enforcement to file an appeal, as specified, and would require the department to inform the complainant of these appeal rights, as specified.

The bill would also specify that the names of any persons contained in the records of the department in connection with the California Residential Care Facilities for the Elderly Act are exempt from public disclosure, except for the names of the officers, employees, or agents of the department conducting an investigation or inspection in response to a complaint filed under the act.

Existing law prohibits a licensee from discriminating or retaliating in any manner against a person receiving the services of the licensee's residential care facility for the elderly, or against an employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department, or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the appropriate local ombudsman, or with the state ombudsman.

This bill would require the department to ensure that a licensee complies with that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1418.21 of the Health and Safety Code
2 is amended to read:
3 1418.21. (a) ~~A~~*Notwithstanding Sections 4514 and 5328 of*
4 *the Welfare and Institutions Code, or any other provision of law,*
5 a skilled nursing facility that has been certified for purposes of
6 Medicare or Medicaid shall post the overall facility rating
7 information determined by the federal Centers for Medicare and
8 Medicaid Services (CMS) in accordance with the following
9 requirements:
10 (1) The information shall be posted in at least the following
11 locations in the facility:
12 (A) An area accessible and visible to members of the public.
13 (B) An area used for employee breaks.
14 (C) An area used by residents for communal functions, such as
15 dining, resident council meetings, or activities.
16 (2) The information shall be posted on white or light-colored
17 paper that includes all of the following, in the following order:
18 (A) The full name of the facility, in a clear and easily readable
19 font of at least 28 point.
20 (B) The full address of the facility in a clear and easily readable
21 font of at least 20 point.
22 (C) The most recent overall star rating given by CMS to that
23 facility, except that a facility shall have seven business days from
24 the date when it receives a different rating from CMS to include
25 the updated rating in the posting. The star rating shall be aligned
26 in the center of the page. The star rating shall be expressed as the
27 number that reflects the number of stars given to the facility by
28 CMS. The number shall be in a clear and easily readable font of
29 at least two inches print.
30 (D) Directly below the star symbols shall be the following text
31 in a clear and easily readable font of at least 28 point:
32 “The above number is out of 5 stars.”
33 (E) Directly below the text described in subparagraph (D) shall
34 be the following text in a clear and easily readable font of at least
35 14 point:

1 “This facility is reviewed annually and has been licensed by the
2 State of California and certified by the federal Centers for Medicare
3 and Medicaid Services (CMS). CMS rates facilities that are
4 certified to accept Medicare or Medicaid. CMS gave the above
5 rating to this facility. A detailed explanation of this rating is
6 maintained at this facility and will be made available upon request.
7 This information can also be accessed online at the Nursing Home
8 Compare Internet Web site at
9 <http://www.medicare.gov/NHcompare>. Like any information, the
10 Five-Star Quality Rating System has strengths and limits. The
11 criteria upon which the rating is determined may not represent all
12 of the aspects of care that may be important to you. You are
13 encouraged to discuss the rating with facility staff. The Five-Star
14 Quality Rating System was created to help consumers, their
15 families, and caregivers compare nursing homes more easily and
16 help identify areas about which you may want to ask questions.
17 Nursing home ratings are assigned based on ratings given to health
18 inspections, staffing, and quality measures. Some areas are assigned
19 a greater weight than other areas. These ratings are combined to
20 calculate the overall rating posted here.”

21 (F) Directly below the text described in subparagraph (E), the
22 following text shall appear in a clear and easily readable font of
23 at least 14 point:
24

25 “State licensing information on skilled nursing facilities is
26 available on the State Department of Public Health’s Internet Web
27 site at: www.cdph.ca.gov, under Programs, Licensing and
28 Certification, Health Facilities Consumer Information System.”
29

30 (3) For the purposes of this section, “a detailed explanation of
31 this rating” shall include, but shall not be limited to, a printout of
32 the information explaining the Five-Star Quality Rating System
33 that is available on the CMS Nursing Home Compare Internet Web
34 site. This information shall be maintained at the facility and shall
35 be made available upon request.

36 (4) The requirements of this section shall be in addition to any
37 other posting or inspection report availability requirements.

38 (b) Violation of this section shall constitute a class B violation,
39 as defined in subdivision (e) of Section 1424 and, notwithstanding
40 Section 1290, shall not constitute a crime. Fines from a violation

1 of this section shall be deposited into the State Health Facilities
2 Citation Penalties Account, created pursuant to Section 1417.2.

3 (c) This section shall be operative on January 1, 2011.

4 SEC. 2. Section 1422.5 of the Health and Safety Code is
5 amended to read:

6 1422.5. (a) The department shall develop and establish a
7 consumer information service system to provide updated and
8 accurate information to the general public and consumers regarding
9 long-term care facilities in their communities. The consumer
10 information service system shall include, but need not be limited
11 to, all of the following elements:

12 (1) An on-line inquiry system accessible through a statewide
13 toll-free telephone number and the Internet.

14 (2) Long-term health care facility profiles, with data on services
15 provided, a history of all citations and complaints for the last two
16 full survey cycles, and ownership information. The profile for each
17 facility shall include, but not be limited to, all of the following:

18 (A) The name, address, and telephone number of the facility.

19 (B) The number of units or beds in the facility.

20 (C) Whether the facility accepts Medicare or Medi-Cal patients.

21 (D) Whether the facility has a special care unit or program for
22 people with Alzheimer's disease and other dementias, and whether
23 the facility participates in the voluntary disclosure program for
24 special care units.

25 (E) Whether the facility is a for-profit or not-for-profit provider.

26 (3) Information regarding substantiated complaints shall include
27 the action taken and the date of action.

28 (4) Information regarding the state citations assessed shall
29 include the status of the state citation, including the facility's plan
30 or correction, and information as to whether an appeal has been
31 filed.

32 (5) Any appeal resolution pertaining to a citation or complaint
33 shall be updated on the file in a timely manner.

34 (b) Where feasible, the department shall interface the consumer
35 information service system with its Automated Certification and
36 Licensure Information Management System.

37 (c) It is the intent of the Legislature that the department, in
38 developing and establishing the system pursuant to subdivision

39 (a), maximize the use of available federal funds.

(d) (1) Notwithstanding the consumer information service system established pursuant to subdivision (a), by January 1, 2002, the state department shall develop a method whereby information is provided to the public and consumers on long-term health care facilities. The information provided shall include, but not be limited to, all of the following elements:

(A) Substantiated complaints, including the action taken and the date of the action.

(B) State citations assessed, including the status of any citation and whether an appeal has been filed.

(C) State actions, including license suspensions, revocations, and receiverships.

(D) Federal enforcement sanctions imposed, including any denial of payment, temporary management, termination, or civil money penalty of five hundred dollars (\$500) or more.

(E) Any information or data beneficial to the public and consumers.

(2) This subdivision shall become inoperative on July 1, 2003.

(e) In implementing this section, the department shall ensure the confidentiality of personal and identifying information of residents and employees and shall not disclose this information through the consumer information service system developed pursuant to this section.

(f) *The provisions of this section shall apply notwithstanding Sections 4514 and 5328 of the Welfare and Institutions Code or any other provision of law.*

SEC. 3. Section 1424 of the Health and Safety Code is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability or disorder.

1 (4) The good faith efforts exercised by the facility to prevent
2 the violation from occurring.

3 (5) The licensee's history of compliance with regulations.

4 (b) ~~Relevant~~ *Notwithstanding Sections 4514 and 5328 of the*
5 *Welfare and Institutions Code, or any other provision of law,*
6 *relevant* facts considered by the department in determining the
7 amount of the civil penalty shall be documented by the department
8 on an attachment to the citation and available in the public record.
9 This requirement shall not preclude the department or a facility
10 from introducing facts not listed on the citation to support or
11 challenge the amount of the civil penalty in any proceeding set
12 forth in Section 1428.

13 (c) Class "AA" violations are violations that meet the criteria
14 for a class "A" violation and that the state department determines
15 to have been a direct proximate cause of death of a patient or
16 resident of a long-term health care facility. Except as provided in
17 Section 1424.5, a class "AA" citation is subject to a civil penalty
18 in the amount of not less than five thousand dollars (\$5,000) and
19 not exceeding twenty-five thousand dollars (\$25,000) for each
20 citation. In any action to enforce a citation issued under this
21 subdivision, the state department shall prove all of the following:

22 (1) The violation was a direct proximate cause of death of a
23 patient or resident.

24 (2) The death resulted from an occurrence of a nature that the
25 regulation was designed to prevent.

26 (3) The patient or resident suffering the death was among the
27 class of persons for whose protection the regulation was adopted.

28 If the state department meets this burden of proof, the licensee
29 shall have the burden of proving that the licensee did what might
30 reasonably be expected of a long-term health care facility licensee,
31 acting under similar circumstances, to comply with the regulation.
32 If the licensee sustains this burden, then the citation shall be
33 dismissed.

34 Except as provided in Section 1424.5, for each class "AA"
35 citation within a 12-month period that has become final, the state
36 department shall consider the suspension or revocation of the
37 facility's license in accordance with Section 1294. For a third or
38 subsequent class "AA" citation in a facility within that 12-month
39 period that has been sustained, the state department shall commence

1 action to suspend or revoke the facility's license in accordance
2 with Section 1294.

3 (d) Class "A" violations are violations which the state
4 department determines present either (1) imminent danger that
5 death or serious harm to the patients or residents of the long-term
6 health care facility would result therefrom, or (2) substantial
7 probability that death or serious physical harm to patients or
8 residents of the long-term health care facility would result
9 therefrom. A physical condition or one or more practices, means,
10 methods, or operations in use in a long-term health care facility
11 may constitute a class "A" violation. The condition or practice
12 constituting a class "A" violation shall be abated or eliminated
13 immediately, unless a fixed period of time, as determined by the
14 state department, is required for correction. Except as provided in
15 Section 1424.5, a class "A" citation is subject to a civil penalty in
16 an amount not less than one thousand dollars (\$1,000) and not
17 exceeding ten thousand dollars (\$10,000) for each and every
18 citation.

19 If the state department establishes that a violation occurred, the
20 licensee shall have the burden of proving that the licensee did what
21 might reasonably be expected of a long-term health care facility
22 licensee, acting under similar circumstances, to comply with the
23 regulation. If the licensee sustains this burden, then the citation
24 shall be dismissed.

25 (e) Except as provided in paragraph (4) of subdivision (a) of
26 Section 1424.5, class "B" violations are violations that the state
27 department determines have a direct or immediate relationship to
28 the health, safety, or security of long-term health care facility
29 patients or residents, other than class "AA" or "A" violations.
30 Unless otherwise determined by the state department to be a class
31 "A" violation pursuant to this chapter and rules and regulations
32 adopted pursuant thereto, any violation of a patient's rights as set
33 forth in Sections 72527 and 73523 of Title 22 of the California
34 Code of Regulations, that is determined by the state department
35 to cause or under circumstances likely to cause significant
36 humiliation, indignity, anxiety, or other emotional trauma to a
37 patient is a class "B" violation. A class "B" citation is subject to
38 a civil penalty in an amount not less than one hundred dollars
39 (\$100) and not exceeding one thousand dollars (\$1,000) for each
40 and every citation. A class "B" citation shall specify the time within

1 which the violation is required to be corrected. If the state
2 department establishes that a violation occurred, the licensee shall
3 have the burden of proving that the licensee did what might
4 reasonably be expected of a long-term health care facility licensee,
5 acting under similar circumstances, to comply with the regulation.
6 If the licensee sustains this burden, then the citation shall be
7 dismissed.

8 In the event of any citation under this paragraph, if the state
9 department establishes that a violation occurred, the licensee shall
10 have the burden of proving that the licensee did what might
11 reasonably be expected of a long-term health care facility licensee,
12 acting under similar circumstances, to comply with the regulation.
13 If the licensee sustains this burden, then the citation shall be
14 dismissed.

15 (f) (1) Any willful material falsification or willful material
16 omission in the health record of a patient of a long-term health
17 care facility is a violation.

18 (2) "Willful material falsification," as used in this section, means
19 any entry in the patient health care record pertaining to the
20 administration of medication, or treatments ordered for the patient,
21 or pertaining to services for the prevention or treatment of
22 decubitus ulcers or contractures, or pertaining to tests and
23 measurements of vital signs, or notations of input and output of
24 fluids, that was made with the knowledge that the records falsely
25 reflect the condition of the resident or the care or services provided.

26 (3) "Willful material omission," as used in this section, means
27 the willful failure to record any untoward event that has affected
28 the health, safety, or security of the specific patient, and that was
29 omitted with the knowledge that the records falsely reflect the
30 condition of the resident or the care or services provided.

31 (g) Except as provided in subdivision (a) of Section 1424.5, a
32 violation of subdivision (f) may result in a civil penalty not to
33 exceed ten thousand dollars (\$10,000), as specified in paragraphs
34 (1) to (3), inclusive.

35 (1) The willful material falsification or willful material omission
36 is subject to a civil penalty of not less than two thousand five
37 hundred dollars (\$2,500) or more than ten thousand dollars
38 (\$10,000) in instances where the health care record is relied upon
39 by a health care professional to the detriment of a patient by
40 affecting the administration of medications or treatments, the

1 issuance of orders, or the development of plans of care. In all other
2 cases, violations of this subdivision are subject to a civil penalty
3 not exceeding two thousand five hundred dollars (\$2,500).

4 (2) Where the penalty assessed is one thousand dollars (\$1,000)
5 or less, the violation shall be issued and enforced, except as
6 provided in this subdivision, in the same manner as a class “B”
7 violation, and shall include the right of appeal as specified in
8 Section 1428. Where the assessed penalty is in excess of one
9 thousand dollars (\$1,000), or for skilled nursing facilities or
10 intermediate care facilities as specified in paragraphs (1) and (2)
11 of subdivision (a) of Section 1418, in excess of two thousand
12 dollars (\$2,000), the violation shall be issued and enforced, except
13 as provided in this subdivision, in the same manner as a class “A”
14 violation, and shall include the right of appeal as specified in
15 Section 1428.

16 Nothing in this section shall be construed as a change in previous
17 law enacted by Chapter 11 of the Statutes of 1985 relative to this
18 paragraph, but merely as a clarification of existing law.

19 (3) Nothing in this subdivision shall preclude the state
20 department from issuing a class “A” or class “B” citation for any
21 violation that meets the requirements for that citation, regardless
22 of whether the violation also constitutes a violation of this
23 subdivision. However, no single act, omission, or occurrence may
24 be cited both as a class “A” or class “B” violation and as a violation
25 of this subdivision.

26 (h) Where the licensee has failed to post the notices as required
27 by Section 9718 of the Welfare and Institutions Code in the manner
28 required under Section 1422.6, the state department shall assess
29 the licensee a civil penalty in the amount of one hundred dollars
30 (\$100) for each day the failure to post the notices continues. Where
31 the total penalty assessed is less than two thousand dollars (\$2,000),
32 the violation shall be issued and enforced in the same manner as
33 a class “B” violation, and shall include the right of appeal as
34 specified in Section 1428. Where the assessed penalty is equal to
35 or in excess of two thousand dollars (\$2,000), the violation shall
36 be issued and enforced in the same manner as a class “A” violation
37 and shall include the right of appeal as specified in Section 1428.
38 Any fines collected pursuant to this subdivision shall be used to
39 fund the costs incurred by the California Department of Aging in
40 producing and posting the posters.

1 (i) The director shall prescribe procedures for the issuance of a
2 notice of violation with respect to violations having only a minimal
3 relationship to patient safety or health.

4 (j) The department shall provide a copy of all citations issued
5 under this section to the affected residents whose treatment was
6 the basis for the issuance of the citation, to the affected residents'
7 designated family member or representative of each of the
8 residents, and to the complainant if the citation was issued as a
9 result of a complaint.

10 (k) Nothing in this section is intended to change existing
11 statutory or regulatory requirements governing the ability of a
12 licensee to contest a citation pursuant to Section 1428.

13 (l) The department shall ensure that district office activities
14 performed under Sections 1419 to 1424, inclusive, are consistent
15 with the requirements of these sections and all applicable laws and
16 regulations. To ensure the integrity of these activities, the
17 department shall establish a statewide process for the collection
18 of postsurvey evaluations from affected facilities.

19 SEC. 4. Section 1429 of the Health and Safety Code is amended
20 to read:

21 1429. (a) ~~Each~~ *Notwithstanding Sections 4514 and 5328 of*
22 *the Welfare and Institutions Code, or any other provision of law,*
23 *each* class "AA" and class "A" citation specified in subdivisions
24 (c) and (d) of Section 1424 that is issued, or a copy or copies
25 thereof, shall be prominently posted for 120 days. The citation or
26 copy shall be posted in a place or places in plain view of the
27 patients or residents in the long-term health care facility, persons
28 visiting those patients or residents, and persons who inquire about
29 placement in the facility.

30 (1) The citation shall be posted in at least the following locations
31 in the facility:

32 (A) An area accessible and visible to members of the public.

33 (B) An area used for employee breaks.

34 (C) An area used by residents for communal functions, such as
35 dining, resident council meetings, or activities.

36 (2) The citation, along with a cover sheet, shall be posted on a
37 white or light-colored sheet of paper, at least 8 ½ by 11 inches in
38 size, that includes all of the following information:

39 (A) The full name of the facility, in a clear and easily readable
40 font in at least 28-point type.

1 (B) The full address of the facility, in a clear and easily readable
2 font in at least 20-point type.

3 (C) Whether the citation is class “AA” or class “A.”

4 (3) The facility may post the plan of correction.

5 (4) The facility may post a statement disputing the citation or
6 a statement showing the appeal status, or both.

7 (5) The facility may remove and discontinue the posting required
8 by this section if the citation is withdrawn or dismissed by the
9 department.

10 (b) Each class “B” citation specified in subdivision (e) of Section
11 1424 that is issued pursuant to this section and that has become
12 final, or a copy or copies thereof, shall be retained by the licensee
13 at the facility cited until the violation is corrected to the satisfaction
14 of the department. ~~Each~~ *Notwithstanding Sections 4514 and 5328*
15 *of the Welfare and Institutions Code, or any other provision of*
16 *law, each* citation shall be made promptly available by the licensee
17 for inspection or examination by any member of the public who
18 so requests. In addition, every licensee shall post in a place or
19 places in plain view of the patient or resident in the long-term
20 health care facility, persons visiting those patients or residents,
21 and persons who inquire about placement in the facility, a
22 prominent notice informing those persons that copies of all final
23 uncorrected citations issued by the department to the facility will
24 be made promptly available by the licensee for inspection by any
25 person who so requests.

26 (c) A violation of this section shall constitute a class “B”
27 violation, and shall be subject to a civil penalty in the amount of
28 one thousand dollars (\$1,000), as provided in subdivision (e) of
29 Section 1424. Notwithstanding Section 1290, a violation of this
30 section shall not constitute a crime. Fines imposed pursuant to this
31 section shall be deposited into the State Health Facilities Citation
32 Penalties Account, created pursuant to Section 1417.2.

33 SEC. 5. Section 1439 of the Health and Safety Code is amended
34 to read:

35 1439. ~~Any~~ *Notwithstanding Sections 4514 and 5328 of the*
36 *Welfare and Institutions Code, or any other provision of law, any*
37 writing received, owned, used, or retained by the state department
38 in connection with the provisions of this chapter is a public record
39 within the meaning of subdivision (d) of Section 6252 of the
40 Government Code, and, as such, is open to public inspection

1 pursuant to the provision of Sections 6253, 6256, 6257, and 6258
2 of the Government Code. However, the names of any persons
3 contained in such records, except the names of duly authorized
4 officers, employees, or agents of the state department conducting
5 an investigation or inspection in response to a complaint filed
6 pursuant to this chapter, shall not be open to public inspection and
7 copies of such records provided for public inspection shall have
8 such names deleted.

9 SEC. 6. Section 1569.25 is added to the Health and Safety
10 Code, to read:

11 1569.25. The names of any persons contained in the records
12 received, owned, used, or retained by the department in connection
13 with the provisions of this chapter, except the names of duly
14 authorized officers, employees, or agents of the department
15 conducting an investigation or inspection in response to a complaint
16 filed pursuant to this chapter, shall be exempt from disclosure
17 under the California Public Records Act (Chapter 3.5 (commencing
18 with Section 6250) of Division 7 of Title 1 of the Government
19 Code) and copies of the records provided for public inspection
20 shall have those names deleted.

21 SEC. 7. Section 1569.35 of the Health and Safety Code is
22 amended to read:

23 1569.35. (a) ~~Any~~ A person may request an ~~inspection~~
24 ~~investigation~~ of ~~any~~ a residential care facility for the elderly in
25 accordance with this chapter by ~~transmitting to the department~~
26 ~~notice of an alleged~~ making a complaint to the department alleging
27 a violation of applicable requirements prescribed by statutes or
28 regulations of this state, including, but not limited to, a denial of
29 access of any person authorized to enter the facility pursuant to
30 Section 9722 of the Welfare and Institutions Code. A complaint
31 may be made either orally or in writing.

32 (b) ~~The substance of the complaint shall be provided to the~~
33 ~~licensee no earlier than at the time of the inspection. Unless the~~
34 ~~complainant specifically requests otherwise, neither the substance~~
35 ~~of the complaint provided the licensee nor any copy of the~~
36 ~~complaint or any record published, released, or otherwise made~~
37 ~~available to the licensee shall disclose the name of any person~~
38 ~~mentioned in the complaint except the name of any duly authorized~~
39 ~~officer, employee, or agent of the department conducting the~~
40 ~~investigation or inspection pursuant to this chapter.~~

1 (e)

2 (b) (1) Upon receipt of a complaint, ~~other than a complaint~~
3 ~~alleging denial of a statutory right of access to a residential care~~
4 ~~facility for the elderly, the department shall make a preliminary~~
5 ~~review and, unless review. Within two working days of receiving~~
6 ~~the complaint, the department shall notify the complainant of the~~
7 ~~name of the officer, employee, or agent of the department who will~~
8 ~~conduct the investigation. Unless the department determines that~~
9 ~~the complaint is willfully intended to harass a licensee or is without~~
10 ~~any reasonable basis, it shall make an onsite inspection within 10~~
11 ~~days after receiving the complaint except where the visit would~~
12 ~~adversely affect the licensing investigation or the investigation of~~
13 ~~other agencies, including, but not limited to, law enforcement~~
14 ~~agencies. In either event, the complainant shall be promptly~~
15 ~~informed of the department's proposed course of action.~~

16 (2) Notwithstanding paragraph (1), when a complaint alleges
17 abuse, neglect, or a threat of imminent danger of death or serious
18 harm, the department shall make an onsite inspection within 24
19 hours of the receipt of the complaint.

20 (3) Notwithstanding paragraph (1), when a complaint alleges
21 denial of a statutory right of access to a residential care facility
22 for the elderly under Section 9722 of the Welfare and Institutions
23 Code, the department shall immediately review the complaint,
24 confer with the Office of the State Long-Term Care Ombudsman,
25 and notify the complainant of the department's proposed course
26 of action.

27 (4) Prior to conducting an onsite inspection pursuant to this
28 section, the officer, employee, or agent of the department who will
29 conduct the inspection shall contact and interview the complainant
30 and inform the complainant of the department's proposed course
31 of action.

32 (c) The department shall coordinate its investigation of a
33 residential care facility for the elderly under this section with the
34 investigation of the facility by other agencies, including, but not
35 limited to, the Office of the State Long-Term Care Ombudsman
36 and law enforcement agencies.

37 (d) The substance of the complaint shall not be disclosed to the
38 licensee until the completion of the investigation. Unless the
39 complainant specifically requests that his or her own name is
40 released, neither the substance of the complaint provided to the

1 *licensee, nor any copy of the complaint or any record published,*
2 *released, or otherwise made available to the licensee shall disclose*
3 *the name of the complainant or the name of any person mentioned*
4 *in the complaint, except the name of a duly authorized officer,*
5 *employee, or agent of the department conducting the investigation*
6 *or inspection pursuant to this chapter.*

7 *(e) When conducting an onsite inspection pursuant to this*
8 *section, the department shall interview any residents who are the*
9 *subject of the complaint. Additionally, the officer, employee, or*
10 *agent of the department conducting the inspection shall collect*
11 *and evaluate all available evidence, including, but not limited to,*
12 *all of the following:*

13 *(1) Observed conditions.*

14 *(2) Statements of witnesses.*

15 *(3) Interviews with administration, staff, other residents, family*
16 *members, visitors, the long-term care ombudsman, and other*
17 *individuals or agencies that provide services at the facility or have*
18 *information about the complaint.*

19 *(4) Records from the facility and any other relevant sources.*

20 *(f) The department shall complete its investigation within 90*
21 *days of receiving the complaint. Investigation of a complaint*
22 *alleging abuse, neglect, or a threat of imminent danger of death*
23 *or serious harm shall be completed within 30 days of receiving*
24 *the complaint.*

25 *(g) Within 10 days of completing the investigation of a complaint*
26 *under this section, the department shall notify the complainant in*
27 *writing of the department's determination as a result of the*
28 *investigation and of the complainant's right to appeal the findings.*
29 *The written notice shall describe the appeal process provided for*
30 *under subdivision (i) and include a copy of any reports and*
31 *documents describing violations and enforcement actions resulting*
32 *from the investigation.*

33 *(h) (1) A complainant who is dissatisfied with the department's*
34 *investigation, findings, or enforcement actions resulting from the*
35 *investigation may file an appeal by notifying the program manager*
36 *of the officer, employee, or agent of the department conducting*
37 *the inspection in writing within 15 days after receiving the notice*
38 *described in subdivision (g). The program manager shall schedule*
39 *a meeting or teleconference with the complainant within 30 days*
40 *of receiving an appeal. The program manager shall carefully*

1 review the concerns, information, and evidence presented by the
2 complainant to determine whether the department's findings or
3 actions should be modified or whether further investigation is
4 necessary. Within 10 days after conducting the meeting or
5 teleconference with the complainant, the program manager shall
6 notify the complainant in writing of the department's
7 determinations and actions concerning the appeal and of the
8 appeal rights provided in paragraph (2).

9 (2) If a complainant is dissatisfied with the program manager's
10 determination on an appeal, the complainant may, within 15 days
11 after receipt of this determination, file an appeal in writing with
12 the department's Deputy Director of the Community Care
13 Licensing Division. Within 30 days of receiving an appeal, the
14 deputy director or his or her designee shall interview the
15 complainant, consider any information presented or submitted by
16 the complainant, and review the complaint record to determine
17 whether the department's findings or actions should be modified
18 or whether further investigation is necessary. No later than 10
19 days after completing this review, the deputy director shall notify
20 the complainant in writing of the department's determinations and
21 actions concerning the appeal.

22 (3) A complainant may be assisted or represented by any person
23 of his or her choice in the appeal process described in this
24 subdivision.

25 ~~(d) Upon receipt of a complaint alleging denial of a statutory~~
26 ~~right of access to a residential facility for the elderly, the~~
27 ~~department shall review the complaint. The complainant shall be~~
28 ~~notified promptly of the department's proposed course of action.~~

29 SEC. 8. Section 1569.37 of the Health and Safety Code is
30 amended to read:

31 1569.37. (a) No licensee, or officer or employee of the
32 licensee, shall discriminate or retaliate in any manner, including,
33 but not limited to, eviction or threat of eviction, against any person
34 receiving the services of the licensee's residential care facility for
35 the elderly, or against any employee of the licensee's facility, on
36 the basis, or for the reason that, the person or employee or any
37 other person has initiated or participated in the filing of a
38 complaint, grievance, or a request for ~~inspection~~ investigation with
39 the department pursuant to this chapter, or has initiated or
40 participated in the filing of a complaint, grievance, or request for

1 investigation with the appropriate local ombudsman, or with the
2 state ombudsman recognized pursuant to Chapter 11 (commencing
3 with Section 9700) of Division 8.5 of the Welfare and Institutions
4 Code.

5 *(b) The department shall ensure that a licensee or officer or*
6 *employee of the licensee complies with subdivision (a).*

7 SEC. 9. The Legislature finds and declares that Section 6 of
8 this act, which adds Section 1569.25 to the Health and Safety Code,
9 imposes a limitation on the public's right of access to the meetings
10 of public bodies or the writings of public officials and agencies
11 within the meaning of Section 3 of Article I of the California
12 Constitution. Pursuant to that constitutional provision, the
13 Legislature makes the following findings to demonstrate the interest
14 protected by this limitation and the need for protecting that interest:

15 In order to protect the identity of individual residents and
16 employees of residential care facilities for the elderly, the
17 limitations on the public's right of access imposed by Section 6
18 of this act are necessary.